IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1475 (SB) OF 2002

Krishan Pal Singh,
S/o Balbir Singh,
At present posted as Watchman in
The Bajpur Cooperative Sugar Factory Ltd.,
Bajpur, District-Udham Singh Nagar. .....Petitioner.

Versus

General Manager,
Bajpur Cooperative Sugar Factory,
Bajpur, District-Udham Singh Nagar. .....Respondents.

Dated: 22.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Anil Dabral, Advocate for the petitioner and Sri C.K. Sharma, Advocate for the respondent.

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the notice dated 28th August, 2002 by which the petitioner has been directed to be retired on 31st August, 2002 on reaching the age of superannuation.

3. Briefly stated, the petitioner was appointed on Class-IV post on 30th April, 1965. His services were regularized and since then he is performing his duties.

4. As will appear from the Provident Fund register on 24th October, 1966, the age of the petitioner has been shown as 24 years and he joined the services on 25.03.1965.

5. According to the petitioner, the correct date of birth is 15.06.1948.

6. Counsel for the petitioner has submitted that after getting the certificate from the aforesaid institution i.e. Primary School Bajpur, District Udham Singh Nagar, he has submitted the same before the authority concerned, therefore, he has claimed that he should have been retired in the year, 2008.

7. A counter affidavit has been filed on behalf of the Sugar Factory, where in paragraphs 10 and 19, it has been stated as under:-

"10. That Clause 5. of S.O. (LL) provides that the management shall give two months notice to a workman before retiring him. Clause 6 of S.O. (LL) is in two parts. The first sentence of the clause provides that the workman who are in employment at the time of enforcement of these standing orders shall have the right to get their age record modified as per Clause 3 above within one year of enforcement of these standing orders. Rest of the Clause 6 of S.O. (LL) enables the workman to represent to the Regional Additional/Deputy Labour Commissioner of the area concerned within one month of notice of retirement. Such representation shall normally be disposed off within a period of one month of the date of receipt of representation from the workmen, and the orders passed by the Additional/Deputy Labour Commissioner regarding the age of the concerned

workman shall be final and shall not be questioned by any part before any court. In case the Regional Additional/Deputy Labour Commissioner allows the representation the employer shall modify the record of age of the workman immdiatly on receipt of the said orders.

19. That the contents of paragraphs no: 6 and 7 of the writ petition, being false and baseless are denied. The Certificate exhibiting the date of birth as 15.6.48 is not genuine nor it has been authenticates by the D.I.O.S or District Education Officer. It is stated that the petitioner, before retirement, did not inform the answering respondent about his educational qualification nor during the tenure of his total service submitted any school living certificate exhibiting date of birth as 15.6.48, to the management of answering respondent. It is also pointed out that the petitioner claims to be the permanent resident of District: Badaun, U.P.; but on the other hand, in the present case, the petitioner alleges to have studies in class I in the school at Bajpur."

8. In support of the averments made in paragraph 10 of the counter affidavit standing order has been annexed. The same is quoted below:-

"In pursuance of the provisions of Clause (8) of Article 348 of the Constitution the Governor is pleased to order the publication of the following English translation of notification no. 5692 (HI) /XXXVI-2-110 (HI)-77, dated September 27, 1988.

No. 5692 (HI) /XXXVI-2-110 (HI)-77

Dated Lucknow, September 27, 1988.

Whereas, the Standing Orders governing the conditions of employment of workmen in vacuum pan sugar factories of

the State were enforced under Government notification no. 5436-St/XXXVI-A-208-ST-58, dated October 3, 1958:"

9. Clause 6 of the Standing Order regarding the determination of date of birth is quoted below:-

"6. The workman who are in employment at the time of enforcement of these standing orders hall have the right to get their age record modified as per clause 3 above with one year of enforcement of these standing orders. He shall have the right to represent to the Regional Additional/Deputy Labour Commissioner of the area concerned within one month of notice of retirement. Such representations shall normally be disposed off within a period of one month of the date of receipt of representation form the workmen, and the orders passed by the Additional/Deputy Labour Commissioner regarding the age of the concerned workman shall be final and shall not be questioned by any party before any court. Ion case the Regional/Additional Deputy Labour Commissioner allows the representation, the employer shall modify the record of age of the workmen immediately on receipt of the said course."

10. On 27th July, 2006, the petitioner has also filed an application that he may not be evicted from the premises, which he is occupying. This Court has dismissed the said application no. 9305 of 2006. There is no occasion to permit the petitioner for the electricity and water, once the application for safeguarding the eviction has already been rejected. In view of the above, the application no. 10529 of 2006 is also rejected.

11. In ***State of Gujarat & others Vs. Vali Mohmed Dosabhai Sindhi 2006 AIR SCW 3687***, it has been observed as under:-

"The sole object of such rules being that any such claim regarding correction, of the date of birth should not be made or entertained after decades, especially on the even of superannuation of such public servant. In the case of State of Assam v. Daksha Prasad Deka (1970(3) SCC624), this Court said that the date of the compulsory retirement "must in our judgment, be determined on the basis of the service record and not on what the respondent claimed to be his date of birth, unless the service record is first corrected consistently with the appropriate procedure.……The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of this date of birth, in his service book. In many cases, it is a part of the strategy on the part of such public servants to approach the Court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the service books."

12. In case, the petitioner files the representation before the Regional Additional/Deputy Labour Commissioner, he shall decide the same within a period of three months form the date of presentation of the certified copy of the order.

13. Since alternative remedy is available with the petitioner, the writ petition is not maintainable and no interference is required under Article 226/227 of the Constitution of India.

13. In view of the above, the writ petition is dismissed on the ground of alternative remedy. No order as to costs.

(Rajesh Tandon, J.)

22.08.2006
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